

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TOMMY LEE MATTHEWS,

Plaintiff,

No. CIV S-05-0437 LKK GGH P

vs.

SACRAMENTO COUNTY, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se. On April 5, 2005, the court dismissed the complaint with leave to amend. Pending before the court is the amended complaint filed April 21, 2005.

The complaint states a colorable claim for relief against defendant Para pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b).

Also named as a defendant is the Sacramento County Sheriff's Department. A municipal defendant may only be held liable under § 1983 if the unlawful actions of its employees or agents were taken pursuant to that defendant's policies or customs. Monell v. Dept. of Soc. Serv., 436 U.S. 658, 690-91, 98 S.Ct. 2018 (1978). Plaintiff does not allege that defendant Para acted pursuant to a policy of defendant Sacramento County Sheriff's Department. Accordingly, the court separately recommends dismissal of this defendant based on plaintiff's

1 failure to state a colorable claim.

2 In accordance with the above, IT IS HEREBY ORDERED that:

3 1. Service is appropriate for the following defendants: Deputy Para.

4 2. The Clerk of the Court shall send plaintiff 1 USM-285 forms, one summons,
5 an instruction sheet and a copy of the amended complaint filed April 21, 2005.

6 3. Within thirty days from the date of this order, plaintiff shall complete the
7 attached Notice of Submission of Documents and submit the following documents to the court:

8 a. The completed Notice of Submission of Documents;

9 b. One completed summons;

10 c. One completed USM-285 form for each defendant listed in number 3
11 above; and

12 d. Two copies of the endorsed amended complaint filed April 21, 2005.

13 4. Plaintiff need not attempt service on defendants and need not request waiver of
14 service. Upon receipt of the above-described documents, the court will direct the United States
15 Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4
16 without payment of costs.

17 DATED: 5/25/05

18 /s/ Gregory G. Hollows

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GREGORY G. HOLLOWES
UNITED STATES MAGISTRATE JUDGE

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NOTICE OF SUBMISSION
OF DOCUMENTS

_____/

Plaintiff hereby submits the following documents in compliance with the court's
order filed _____:

1 completed summons form

1 completed USM-285 forms

2 copies of the _____

Complaint/Amended Complaint

DATED:

Plaintiff